

REMARKS

Applicants appreciate the Examiner's continued examination of the present application in the non-final Official Action of November 14, 2008 (hereinafter "Official Action"). Applicants also appreciate the Examiner's indication, in the first sentence of the Detailed Action (Page 2) that "Applicant's request for reconsideration of the finality of the rejection of the last Office Action is persuasive and, therefore, the finality of that action is withdrawn". Applicants also appreciate the Examiner's withdrawing of the earlier rejections under 35 U.S.C. §103 in response to Applicants' Request for Reconsideration After Final of November 3, 2008. However, similar to the previous Official Actions in the present case, the present Official Action continues to reject the independent claims under 35 U.S.C. § 103, but cites a new secondary reference. Applicants respectfully submit, however, that the secondary reference does not supply the missing teachings even if the two references are properly combinable. Accordingly, Applicants submit that all pending claims are in condition for allowance. Favorable reconsideration of all pending claims is respectfully requested for at least the reasons discussed below.

The Rejections Under 35 USC §101 Have Been Overcome

Claims 23-28 and 30-32 stand rejected under 35 USC §101 as allegedly being non-statutory. At Page 2, the Official Action provides the following rationale for the "computer program product" claims being non-statutory:

As best can be support [sic] by the specification (¶ 0032), "a software product and also a signal" is actually "a software/computer program and also a signal" which does not fall within any of the enumerated statutory categories because it is an Abstract Idea, *and the invention as claimed does not produce a useful, concrete, and tangible result*. Therefore, claims 23-28, 30-32 is nonstatutory. (Please see MPEP 2106.01[R-6]).

However, Paragraph [32] of the specification states:

[032] The flowchart of **FIG. 3** illustrates the architecture, functionality, and operations of some embodiments of methods, systems, and computer program products for transmitting streaming media to a mobile terminal using the bandwidth associated with a wireless network. In this regard, each block represents a module, segment, or portion of code, which comprises one or more executable instructions for implementing the specified logical function(s). It should also be noted that in other implementations, the function(s) noted in the blocks may occur out of the order noted in **FIG. 3**. For example, two blocks shown in succession may,

in fact, be executed substantially concurrently or the blocks may sometimes be executed in the reverse order, depending on the functionality involved.

With all due respect, this paragraph does not say anything about "a software product and also a signal" or "a software/computer program and also a signal", so that the grounds of rejection do not appear to be appropriate, and no guidance is provided to Applicants as to how to respond.

The rejected claims are in a conventional "computer program product" format including a computer readable storage medium and a computer readable program code configured to provide various functions. As such, they are clearly functional descriptive material claimed as being embodied in computer readable media and are clearly statutory under MPEP 2106.01.

Accordingly, Applicants respectfully request withdrawal of the rejections under 35 USC §101. Alternatively, if the Examiner can suggest amendments to the specification and/or claims that would be desirable for these conventional format computer program product claims, Applicants would be happy to consider these amendments if it places the application in condition for allowance. The Examiner is encouraged to contact the undersigned by telephone to discuss any suggested amendments, or to make a subsequent action non-final, so that Applicants are able to amend the specification and/or claims as suggested by the Examiner.

Claims 1, 12 and 23 are Patentable

Independent Claims 1, 12, and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over United States Patent Publication No. 2004/0057420 to Curcio *et al.* (hereinafter "Curcio") in view of newly cited United States Patent Application Publication No. 2002/0115454 to Hardacker (hereinafter "Hardacker"). (Official Action, page 3). Independent Claim 1 recites, in part:

...providing a wireless communication network that has bandwidth associated therewith to facilitate bi-directional communication between at least one mobile terminal and another mobile terminal;

obtaining authorization from a media broadcaster that provides streaming media to rebroadcast the streaming media over the wireless network, the streaming media comprising audio and/or video content;

obtaining a subscription at the wireless network from the at least one mobile terminal for the streaming media; then
transmitting the streaming media to the at least one mobile terminal using the bandwidth associated with the wireless network.

Independent Claims 12 and 23 include similar recitations and will not be analyzed separately. As highlighted above, authorization is obtained from a media broadcaster to rebroadcast streaming media over a wireless network. A subscription is obtained at the wireless network from one or more mobile terminals for the streaming media.

The Official Action acknowledges that Curcio fails to disclose obtaining authorization from a media broadcaster to allow the streaming media to be rebroadcast over the wireless network and also fails to disclose obtaining a subscription at the wireless network from the at least one mobile terminal that receives the rebroadcast of the streaming media. (Official Action, page 4). The Official Action alleges, however, that Hardacker provides the teachings missing from Curcio. (Official Action, page 4). Applicants respectfully disagree. In particular, as noted in the Hardacker Abstract, Hardacker relates to:

An on-location local multicast distribution system and business method therefor. Contemporaneous information is continuously provided to a local distribution unit on a particular event (e.g., a NASCAR race) from multiple input devices, such as video cameras and microphones.... (Emphasis added.)

Thus, Hardacker relates to an on-location multicast distribution system wherein contemporaneous information is continuously provided to a local distribution unit for a particular event, such as a NASCAR race. Hardacker does not relate to a media broadcaster who rebroadcasts streaming media over a wireless network, but, rather, relates to on-location contemporaneous broadcasts at a particular event. Accordingly, there is no rebroadcasting of streaming media in Hardacker. Moreover, since there is no rebroadcasting of streaming media from a media broadcaster in Hardacker, Hardacker also need not obtain authorization from a media broadcaster that provides streaming media to rebroadcast the streaming media over the wireless network, as recited in Claim 1. Rather, the operator of the NASCAR event or other event would always want to distribute the contemporaneous event information at the local event so as to increase revenue. That is why the operator would set up Hardacker's system at an event. Thus, a separate authorization from a media broadcaster to provide streaming media to rebroadcast the streaming media over a wireless network is not described or suggested in Hardacker. Accordingly, even if the on-location local contemporaneous

broadcast distribution system of Hardacker was provided in Curcio, the recitations of independent Claims 1, 12 and 23 would not be described or suggested. Rather, the provision of on-location local contemporaneous broadcast for a particular event would be added to Curcio.

Moreover, another claim recitation of Claim 1 is not described or suggested in Hardacker. In particular, Claim 1 also recites:

...obtaining a subscription at the wireless network from the at least one mobile terminal for the streaming media;... (Emphasis added.)

Thus, Claim 1 recites that the subscription is obtained at the wireless network for the rebroadcasting. In sharp contrast, Block 132 of Figure 2 of Hardacker describes how users are registered for contemporaneous multimedia feeds during the event. As noted in Paragraph [0022] of Hardacker:

[0022] FIG. 2 is a flow diagram showing a method of doing business 130 according to the preferred embodiment of the present invention. First in step 132, fans, interested in receiving streaming multimedia feeds during the event, e.g., the NASCAR race, register and, optionally, a registration fee may be collected. In step 134, fans that do not own viewers or display devices 116, 118, 120, 122 are afforded an opportunity to rent one. Equipment (display device) rentals may be secured in step 136 with a cash deposit or, preferably, by credit card to cover the potential loss of display devices 116, 118, 120, 122 that may not be returned at the end of an event. Additionally, where a credit card is used to secure the display device, on-site purchases (e.g., memorabilia, concessions, etc.) can be made, interactively, without requiring transmission of additional personal information. (Emphasis added.)

Thus, as fans enter the NASCAR racetrack, there may be a registration desk or kiosk where fans, interested in receiving streaming contemporaneous multimedia content during the event, register, pay a fee, and are provided the opportunity to rent a display device if they don't already own one. Accordingly, a subscription is not obtained at the wireless network, as recited in Claims 1, 12 and 23.

Also, the passages of Hardacker that were cited in the Official Action simply do not describe or suggest the claim recitations. In particular, the Official Action at Page 4 states that the claim recitation of:

...obtaining authorization from a media broadcaster that provides streaming media to rebroadcast the streaming media over the wireless network, the streaming media comprising audio and/or video content;....,

is described by Hardacker Paragraphs [0017], [0019] and [0024]. However, Paragraph [0017] states:

[0017] Referring now to the drawings, and more particularly, **FIG. 1** shows a preferred embodiment local multicast entertainment system **100** according to the present invention. The local multicast system **100** includes one or more transceivers/servers which are distribution units **102** receiving and redistributing local audio and video signals. Strategically placed video cameras **104, 106, 108** and microphones **110, 112, 114** stream local video and audio to the distribution unit **102**. Streaming video and audio are redistributed by the distribution unit to authorized viewers or display devices **116, 118, 120, 122**. Each uniquely identifiable display device **116, 118, 120, 122** receives selected audio and video streams from the distribution unit **102**. Preferably, video cameras **104, 106, 108**, microphones **110, 112, 114** and display devices **116, 118, 120, 122** are in wireless communication with the distribution unit **102**. (Emphasis added.)

This paragraph clearly is silent as to receiving authorization from the media broadcaster to rebroadcast the streaming media. Indeed, there would be no need to receive authorization to rebroadcast streaming media since Hardacker's system is designed to provide an on-location multicast distribution system for providing contemporaneous information to a local distribution unit at a particular event, such as a NASCAR race. Authorization need not be obtained, because the system would not be set up at a NASCAR race if authorization wasn't presumed.

Paragraph [0019] of Hardacker states:

[0019] Each distribution unit **102** is a local multicast system server receiving and transmitting wireless feeds of contemporaneously available multimedia data that are selectively provided to authorized display devices **116, 118, 120** and **122**. So, the distribution unit **102** provides downstream data, audio, video, and advertisements to the display devices **116, 118, 120, 122**, which return upstream data to the server. Downstream data may include statistics on drivers, players, teams, cars, venue, record holders, etc., and may be extracted from a database and provided upon request. The database may be local at the multicast server **102** or, located on a remotely connected (not shown) server, for example, connected over the Internet. Upstream data includes, for example, payment authorization as well as requests for information to be displayed on the device **116, 118, 120, 122**. (Emphasis added.)

Again, obtaining authorization from a media broadcaster that provides streaming media to rebroadcast the streaming media over a wireless network is not described or suggested in this paragraph.

Finally, Paragraph [0024] of Hardacker states:

[0024] Once registered and identified, each fan may select audio, video and data source and begin receiving a multimedia data stream. So, in step **140**, the distribution unit **102** begins streaming multiple streams of multimedia data to registered display devices. For efficiency, transmitted data is compressed, where applicable, prior to transmission and decompressed upon receipt. The distribution unit **102** may compress the streaming audio and video using the Motion Picture Experts Group release 4 (MPEG4) technology standard and transmit the MPEG4 data using the video H.263 Quarter Common Interface Format (QCIF) transmission standard to transfer data at a rate suitable for a small screen size. Optionally, full Common Interface Format (CIF) may be used at higher data transmission rates for display on larger flat panel displays. As noted above, the multimedia data streams include live transmissions from the cameras **104**, **106**, **108** and microphones **110**, **112**, **114** as well as event related data (e.g., event background information such as car and driver statistics) and advertising, if included. Once the event is concluded, in step **142** rented displays are returned.

This passage relates to registering and identifying the fans, but does not describe or suggest obtaining authorization from a media broadcaster that provides streaming media to rebroadcast the streaming media over a wireless network. For at least these additional reasons, Claims 1, 12 and 23 are patentable.

Finally, in rejecting Claim 1 at pages 3-4, the Official Action does not appear to provide any citation to Curcio or Hardacker that describes or suggests "obtaining a subscription at the wireless network from the at least one mobile terminal for the streaming media," as recited in Claim 1. Claims 1, 12 and 23 are independently patentable for at least this added reason.

For at least the foregoing reasons, Applicants respectfully submit that independent Claims 1, 12 and 23 are patentable over Curcio in view of Hardacker, and that dependent Claims 2-10, 13-21 and 24-32 are patentable at least by virtue of their depending from allowable claims.

CONCLUSION

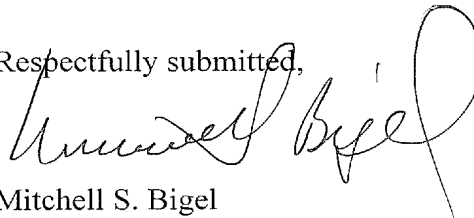
In view of the above, Applicants respectfully request withdrawal of the outstanding rejections and allowance of the present application. Respectfully, the present Official Action is the seventh time that the primary reference Curcio has been used in combination with a different secondary reference in an unsuccessful attempt to supply the teachings that are

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missing in Curcio. Yet, each time, the rejection has been withdrawn by the Examiner or by a Pre-Appeal Panel. Applicants have now shown that, once again, the newly cited Hardacker secondary reference does not describe or suggest the claim recitations that are acknowledged in the Official Action as missing from Curcio. Accordingly, Applicants respectfully request withdrawal of the outstanding rejections and allowance of the present application.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (919) 854-1400.

Respectfully submitted,

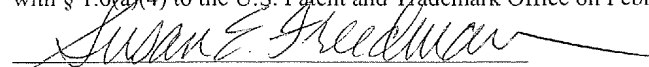


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Susan E. Freedman

Date of Signature: February 16, 2009